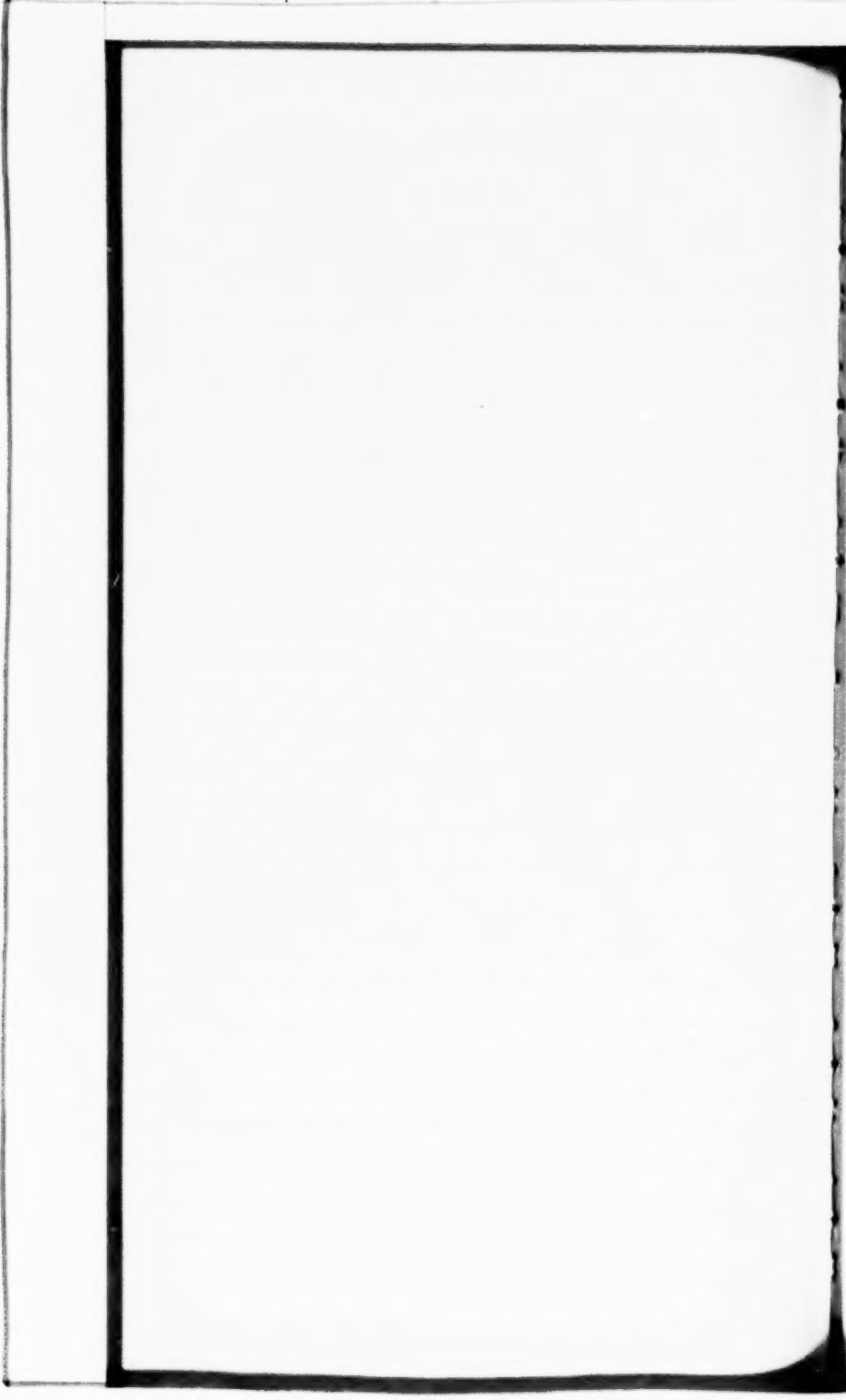


INDEX

	PAGE
Relevant Docket Entries	2
September 18, 1957, Pre-Trial Proceedings Before The Honorable Edward B. Casey	3
September 19, 1957, Pre-Trial Proceedings Before The Honorable Grover C. Niemeyer	3
October 14, 1957, Pre-Trial Proceedings Before The Honorable Grover C. Niemeyer	6
December 11, 1957, Proceedings Before The Honorable Grover C. Niemeyer: (Commencement of Trial)	8
Voir Dire Examination Of A Prospective Juror By The Respondent Allen	10
Trial Proceedings Outside The Presence Of The Jury	29
Trial Proceedings In The Presence Of The Jury	32
December 12, 1957, Proceedings Before The Honorable Grover C. Niemeyer; (Hearing Outside The Presence Of The Jnry) ...	42
Trial Proceedings In The Presence Of The Jury	48
Verdict	48
Sentence	49
Opinion Of The Supreme Court Of Illinois	50
Opinion Of The District Court	56
Notice Of Appeal	58
Opinion Of The Court Of Appeals	59
Dissenting Opinion Of Senior Circuit Judge Hastings	64
Order Of Reversal	68
Order Denying Rehearing	69



IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 606

STATE OF ILLINOIS,

Petitioner,

vs.

WILLIAM ALLEN,

Respondent.

On Writ Of Certiorari To The United States Court Of
Appeals For The Seventh Circuit.

Petition For Certiorari Filed September 17, 1969
Certiorari Granted December 8, 1969

APPENDIX

RELEVANT DOCKET ENTRIES

February 20, 1968—Petitioner's petition for writ of habeas corpus filed.

February 20, 1968—Leave granted to petitioner to file in forma pauperis.

May 24, 1968—Order granting leave to file in forma pauperis vacated; cause dismissed.

July 17, 1968—Leave to appeal in forma pauperis granted.

July 29, 1968—Notice of appeal filed.

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(September 18, 1957; Pre-Trial Proceedings before the Honorable Edward B. Casey; hearing on Respondent's motion for a change of venue.)

[59] The Court: Now, what's your next motion? You can make a motion for a change of venue from this judge, if you want to. If you don't want to, I'm very glad to try it.

Defendant Allen: No, you're not going to get a chance, because you're prejudiced and I'm getting out of this courtroom. I'm asking for that motion right now. Seeing as you overruled my motion, I'm overruling your motion to overrule my motion that you're not going to let me be tried in this here county.

The Court: Okay.

Defendant Allen: And I'm getting out of this courtroom now.

The Court: What I'll do is this: I'll appoint the Public Defender.

Defendant Allen: I'm not accepting him.

The Court: Somebody has to draft your petition.

Defendant Allen: No.

The Court: Are you going to draft your own petition?

Defendant Allen: I want a change of venue. I'm calling my sister this evening to have a lawyer to appear in court to defend me.

.

(September 19, 1957; Pre-Trial Proceedings before the Honorable Grover C. Niemeyer.)

[71] Defendant Allen: I am asking for a lawyer this morning. I would like to ask you for a lawyer, is that all right with you? Uh-huh?

The Court: Why don't you want the Public Defender?

Defendant Allen: Because he is not good enough to protect me. He can't protect me from the State's Attorney, he is incompetent and he doesn't see eye to eye with me on the case. He has a different opinion.

I would like to ask for one of these lawyers from the Chicago Bar Association. William Scott Stewart, Floyd Thompson, Emmett Byrne, John S. Boyle, Adlai Stevenson, George Bieber, Mike Brodtkin, John Gutknecht, Jerry Giesler, Everett Williams, Erle Stanley Gardner. They are lawyers of my own choosing, any one of which you can give me.

What do you have to say about that?

The Court: I am not going to ask either of those gentlemen to serve. If you don't want the Public Defender the Bar Association has a committee on defense of criminals, if they want to send some one out to represent you, all well and good. Otherwise, you will have to get your own counsel.

[72] Defendant Costa: I would like to see if I can't get Raymond Marks to defend me.

The Court: That is all right.

Defendant Allen: They hit me over in the court room the other day. This other court, I don't know where it was.

I want to re-ask you, I want the court to order the State's Attorney to furnish me with a list of witnesses, the names and addresses and so forth; the names of the jurors, a copy of any written statement made by anyone with reference to my case.

You know I have got to have the names of the jurors. When you go before a court you are supposed to get a list, ain't that right? I want to order the State's Attorney to give me that because I have to have that. Everyone is supposed to be entitled to that before your arraignment. They told me they would give it to me.

The Court: If the Bar Association—

Defendant Allen: No, we already got that straight, we want to get this now. We want to get this list of jurors.

The Court: Just a moment, just a moment, young man.

Defendant Allen: Don't get mad at me, I'm only [73] asking.

The Court: I don't know how you can put in what you don't know about the handling of these matters. If the Bar Association will furnish one of their men on the committee to defend you it is perfectly agreeable with the court. That attorney will then make the necessary request and there is no need for you to do it.

Defendant Allen: Yes, I would like to—

The Court: I have a little over 50 years' experience as a lawyer and some of it in the State's Attorney's Office, 24 years—

Defendant Allen: Did you work for the State's Attorney?

The Court: What?

Defendant Allen: Were you a prosecutor?

The Court: Oh, yes.

Defendant Allen: Yes? That's what I figured.

The Court: Way back in 1917 to 1920.

Mr. Branion (Asst. Public Defender): A very good one, too.

The Court: And I was First Assistant.

Defendant Allen: Getting back to this thing, I would like to order them to give me that because I am entitled to it. You ain't going to order it? You deny it?

[74] The Court: No, I am not making any orders whatever.

Defendant Allen: You are denying me them?

The Court: No.

Defendant Allen: You are accepting me then?

The Court: Now just be quiet. I'll tell you what will be done here. I will have—will you communicate with the Bar Association?

Mr. Branion: Yes, Judge.

The Court: And have them appoint someone and they will see you. That lawyer then will represent you in court. I will entertain what motions he makes.

Defendant Allen: You mean he will represent me if I accept him, isn't that what you mean?

The Court: Yes, I'll do the best I can. If he will not represent you, why if you won't take him, then it is up to you to get a lawyer or attempt to defend yourself.

Defendant Allen: No, no, no, I am incompetent, I can't defend myself.

The Court: I was going to say that men who defend themselves generally go to the penitentiary.

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(October 14, 1957; Pre-Trial Proceedings before the Honorable Grover C. Niemeyer).

[86] Mr. Kallick (Asst. State's Attorney): How much time would counsel need to prepare on the 1956 indictments?

Mr. Kelly (Defense Counsel): Frankly, I haven't even seen—but just casually I would think—

The Defendant: Wait a minute. Wait a minute right here. We are going to handle them with another, we are going to have another lawyer on these charges. This man has too much work to do. They have six or seven indictments against me. This man can't do this by himself. This man only had fifteen minutes conversation with me. You are going to give him a continuance. Let him have a recess and let him get himself together, because he can't handle six cases at once. You are going to give him some more lawyers or let, or let this man have a continuance on the 1957 charge.

The Court: The Court has practised law more than fifty years.

The Defendant: I know, and I have been listening to it a while.

The Court: Since 1904, and I think I am more competent than the defendant to determine whether he needs more than one lawyer. We are only going to proceed on one case at one time. You can rest assured counsel [87] will be given ample time to prepare for the case upon which the State proceeds, and the State will advise him in advance as to what date he expects to proceed.

The Defendant: I am beginning to think you might need a little sanity test yourself.

The Court: Well, that may be true.

The Defendant: I know it might be.

Mr. Kallick: If the Court please, the State will be ready at any date the Court may see fit, to proceed on 56-1628 for trial.

Mr. Kelly: Do you have the copy?

The Defendant: No, I don't.

Mr. Kelly: The State advises me in this particular indictment there is an habitual count in it.

Mr. Kallick: That is correct.

Mr. Kelly: In view of that, if your Honor please, I would think that I would need at least two weeks.

The Defendant: He is not going to defend me in the trials in the 1956 cases. I am going to be my own lawyer.

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(December 11, 1957; Proceedings before the Honorable Grover C. Niemeyer; Commencement of trial.)

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[96] The Defendant: I want another lawyer. I don't want him as my lawyer.

Mr. Kallick (Asst. States Attorney): The State's ready, your Honor.

The Defendant: I want to be my own lawyer. I don't want him no more.

The Court: Well, now, you've had several lawyers.

The Defendant: But I never had myself for a lawyer.

The Court: Now, wait a minute. I'm not going to permit lawyers, properly chosen, to be thrown out and rejected unless there is some valid reason. Now, you told me some time ago, when I asked you, that you had no experience and you did not feel qualified to act as your own lawyer. Now we have got these cases reduced to

[97]

the 1956 cases, in effect, through the activities of your present counsel, wiping out your 1957 cases, because of the presumption pending or existing prior to your restoration in October.

Now, of course, a defendant is permitted to represent himself. But, as I've told you before, it's generally fatal. I would suggest to you that you proceed to trial with Mr. Kelly.

The Defendant: No.

The Court: You'll get better results.

The Defendant: No, I won't. I want to be my own lawyer. I've got a whole bunch of law books they sent me from a law school and I'm taking a course in it, and I've got them in my cell now.

The Court: Well, that still doesn't make you a lawyer.

The Defendant: I know how to do it. I can be my own lawyer. That's my right. I read it in a book. I've got the right to be my own lawyer.

The Court: Well, as I've frequently said, the law [98] gives a man the right to be his own lawyer, but it cannot give him the ability and the talent and the experience to successfully be his own lawyer.

The Defendant: I believe I'll be a success. Anyway, the only time I've ever seen this lawyer was just now for about two minutes back in the bullpen. I've never seen him before that. I've never seen him before, since you told me last time I was in court to see him and talk to the lawyer, and you told me to talk to him now. This is the first time I've ever seen him and for only two minutes.

The Court: I'm satisfied, from what I've been advised, that he has been making a diligent search, in an effort to prepare and represent you to the fullest extent.

The Defendant: I want to be my own lawyer.

The Court: I'll let you be your own lawyer, but I'll ask that Mr. Kelly sit in and protect the record for you, insofar as possible.

The Defendant: I don't want nobody advising me and I don't need no help from anybody. I want him completely sitting aside from my case.

The Court: The court has some responsibility and some authority and, for your own protection, that is the way we will conduct the trial.

* * * * *

(Voire Dire Examination of a prospective juror by the Respondent.)

* * * * *

[114] GEORGE ALEXA, a prospective juror, having been first duly sworn, to answer questions, was examined as follows:

Examination by the Defendant:

Q. What's your name?

A. George Alexa.

Q. Where do you live?

A. Berwyn.

[115] What's your address?

A. 1413 South Ridgeland.

Q. How long have you lived there?

A. Approximately nine years.

Q. Have you got any children?

A. Three children.

Q. How old are they?

A. Two, twenty year old girls and one boy 7.

Q. Are they married?

A. Yes, sir.

Q. Does your wife work?

A. No, sir.

Q. Do you work?

A. Yes, sir.

Q. Where do you work?

A. At the present time at Lawless Press.

Q. What's your occupation?

A. Traffic manager.

Q. How much do you get paid a week?

A. It all depends, if I work Saturday, I get paid additional, otherwise I get paid \$135.00.

Q. How long have you been working there?

A. Six months.

Q. Were you ever in the army?

[116] A. No, sir.

Q. What schools do your children go to?

A. One girl is married, one is a beautician at the present time and I have a little boy going to a parochial school.

Q. Were you born in this country?

A. Yes, sir. Cicero.

Q. Have you lived there all your life?

A. Cicero and Berwyn.

Q. Have you ever served on a jury before?

A. No, sir.

Q. Has your wife ever served on a jury before?

A. Not to my knowledge. I'd say no. I'd have to, because I would know.

Q. Have you ever been arrested before?

A. What are you referring to "arrested"?

Q. Anything.

A. Parking tickets, yes.

Q. Did you ever serve in jail for it?

A. No, sir.

Q. Did you ever hear of me before?

A. Absolutely not.

Q. Did the State's Attorney try to bribe you, or anything?

[117] A. Absolutely not.

Q. The same as they'd like to have you find me guilty.

A. No, sir.

Q. When you were called in this case, if you found out that I served 7 years in the penitentiary, that wouldn't make you prejudiced, would it?

A. Absolutely not.

Q. If you find out that I served four years in Sing Sing, that wouldn't make you prejudiced would it?

A. No, sir.

Q. Have you ever been in jail?

A. No, sir.

Q. Have you ever spoke to a psychiatrist?

A. Absolutely not.

Q. Do you know any of these people in the Criminal Court here?

A. Absolutely not.

Q. Do you know the State's Attorney?

A. Absolutely not.

Q. Do you know anybody working in this whole building?

A. Not to my knowledge.

[118] Q. Not to your knowledge?

A. No.

Q. When you go back in the room there— You kind of hesitated when he asked you about your bringing a verdict back.

A. I misunderstood him, just like I told him.

Q. Do you misunderstand me?

A. No, I don't.

Q. You know what I'm saying to you?

A. That's right, I do.

Q. What's your nationality?

A. I'm Bohemian.

Q. All Bohemian?

A. Yes, sir.

Q. Were you born in this country?

A. My mother and father were, yes; not the grandfather.

Q. Do you have anything against any other nationality?

A. Absolutely not.

Q. Negroes?

A. Absolutely not.

Q. Irish?

A. Absolutely not. I've got friends in every na-
[119] tionality.

Q. Do you use narcotics?

A. Absolutely not.

Q. Do you drink?

A. I do, yes.

Q. How much do you drink?

A. Just enough to take care of me. A couple of drinks,
that's all.

Q. To take care of you. When you drink, do you usual-
ly get real drunk?

A. No, sir.

Q. Are you drunk now?

A. No, siree. I'll tell you, I haven't had a drink for
sometime.

Q. Especially since Christmas is here.

A. No, sir. I just don't like it.

Q. Has any of your family been in an insane asylum?

A. No, sir.

Q. Have they ever been in prison?

A. No, sir.

Q. How old are you?

A. 42. I'll be 42 December 29th.

Q. Why didn't they take you in the army?

[120] A. Because I was rejected. Ruptured.

Q. Very seriously?

A. Yes, sir. And after I was taken care of, I was given
a deferment. By that time I was on government work.

Q. Have you ever been stuck up?

A. No, sir.

Q. Did you ever know anybody that was stuck up?

A. I never heard of anybody. They might have been but they never told me.

Q. You say you're living in Chicago all your life?

A. No, sir. I lived in Cicero and Berwyn. I was born in Chicago.

Q. You never served any time in jail before?

A. Absolutely not.

Q. What grade in school did you go to?

A. 7th Grade.

Q. The 7th Grade in school?

A. That's right.

Q. In other words, you haven't gotten much of an education?

A. Yes, I have.

Q. You have an education?

A. Yes, sir.

[121] Q. You mean, just by seeing people and talking to them, you've learned a lot from them?

A. Yes, I have.

Q. That's a pretty good education. What school did you go to?

A. I was in an orphanage.

Q. When you were a little boy?

A. That's right. I got out when I was fifteen.

Q. Do you know which orphanage you were in?

A. Yes, sir.

Q. Which one?

A. St. Joseph's Bohemian Orphanage in Lisle.

Q. And it was because of the fact that you'd been in there that you were more or less incarcerated. You were just a child and you were just incarcerated because you couldn't go out in the world for yourself. That's the reason?

A. That's the reason. My mother died and my father couldn't take care of me.

Q. What religion are you?

A. I'm a Catholic, a Roman Catholic.

Q. And you don't have nothing against no other religion, do you?

A. No, I don't. Everybody should be something.

[122] Q. If these people should come to find out I don't believe in God, that wouldn't make any difference?

A. That doesn't mean anything to me.

Q. Do you know these people are trying to send me to the penitentiary?

A. I don't.

Q. Well, I'm going to tell it to you. You know, these people are trying to make a mockery over here.

A. No, I don't. No.

Q. How long have you worked at this place?

A. Which place? Which one?

Q. Where you work now.

A. Six months.

Q. Where did you work before that?

A. At Wallace Press, 22 years.

Q. 22 years?

A. That's right.

Q. In one place?

A. That's right.

Q. How come you quit?

A. I resigned to take a salesmanship job.

Q. Do you know any policemen on the police force?

[123] Do I know any policemen?

Q. Yes.

A. I know them casually. I say hello and good-bye.

Q. Do you know them by name?

A. No.

Q. Do you have a garden in your yard, around your house?

A. Well, if we do, it's nothing, just grass. What are you referring to, "a garden"? You mean vegetables?

Q. Just grass?

A. Yes.

Q. You take very good care of it, don't you?

A. My wife does, I don't.

Q. You like to see it taken care of?

A. That's right.

Q. If you see something growing long, you wouldn't like that, would you?

A. I have a 7 year old boy, and if he wants to play on the grass, let him do it. If he's got any of his friends, let him do it, let him play. We don't have many playgrounds.

[124] Q. If someone was tramping over your grass and bothering you, you wouldn't like that, would you, a stranger?

A. No, I don't think so.

Q. You wouldn't like him kicking through your yard, would you?

A. I can't answer yes or no. Nobody has done it.

Q. You say you have a boy seven years old?

A. That's right.

Q. Does he go to school?

A. Yes, sir. He's in 2nd grade.

Q. What school is that?

A. St. Mary's LaSalle Parochial School.

Q. Where's that?

A. In Berwyn.

Q. Do you own an automobile?

A. Yes, I do.

Q. What kind do you own?

A. A 1955 Buick.

Q. Is it paid for?

A. Yes.

Q. You paid for it?

A. Yes, sir.

Q. Did you just come into the criminal court building today?

[125] A. No, sir. This will be—Last week Monday will be the second.

Q. In other words, you've been going through this kind of stuff for a long time?

A. No, sir.

Q. Is this the first time you ever sat in a jury chair?

A. Yes, sir.

Q. In this court building?

A. We did have something at Judge Casey's, that's right.

Q. Something?

A. It was just a short case.

Q. What was it about?

A. A sanity plea.

Q. A sanity plea?

A. That's right.

Q. To determine whether a person is sane?

A. That's right. On one witness, the doctor. We didn't hear the case.

Q. You didn't hear the case.

A. No, sir.

Q. In other words, you just find out—

[126] A. Just the doctor came in and gave his verdict, what he thought the individual was, sane or insane.

Q. What did you say?

A. We said he was sane.

Q. And do you know what he was charged with?

A. No, we didn't. We didn't hear the case.

Q. Do you know anything about insanity?

A. No, I don't.

Q. These people got me here, the Judge and the State's Attorney,— they've got me in here,— and my lawyer, he's turned against me— and everytime I come in the courtroom there is some mention of it. But the man,—here's my lawyer right over here (indicating)—he's been my lawyer for approximately three months and he's up here

defending me, supposed to defend me. They were going to take me to trial this morning out here before you people. And do you know how long he spoke to me, before they brang me in here? He spoke to me six minutes. He spoke to me two minutes back there (indicating)—

Mr. Kallick: I'm going to object to this.

The Court: Now, Mr. Allen, I've been exceedingly [127] patient. You've asked a lot of irrelevant and immaterial questions. You've had a number of attorneys. Mr. Kelly has been acting for you for over a month now, and you insisted this morning upon the right to try the case yourself, as attorney, but you've got to keep within the regular bounds. You've asked a lot of immaterial questions, which were personal, which I don't think the juror should be called upon to answer, and you will confine yourself solely to questions relating to their qualifications as jurors and I want no statement from you as to any matters of fact.

The Defendant: Are you finished?

The Court: Proceed.

The Defendant: Are you finished?

The Court: Proceed.

The Defendant: As I was telling you, I had this lawyer and he had spoken to me for six minutes.

The Court: No.

The Defendant: In other words, you don't want the jury to know what you're doing up here, but I'm going to tell them what you're doing. There's going to be no lawyer that's going to speak to me for six minutes, when my life is at stake here, and push me into trial. That man [128] don't even know my name.

The Court: Just a minute. I told the jury that I'm permitting you, at your request, to represent yourself.

The Defendant: That's right.

The Court: But I'm not going to permit you to make a lot of statements of fact, which may or may not be true, and I'm not going to attempt to determine their truth. You are now examining a jury, and it's immaterial as to any difficulties, real or fancied, which you might have had with your attorney or with the court. You'll limit yourself to proper questions. I want no further statements.

The Defendant: Are you finished?

The Court: Proceed.

The Defendant: I'm telling you this lawyer has been my lawyer for six minutes, a six minute lawyer in my life.

The Court: All right. Now, just a minute. If you persist in that, I'll insist—

The Defendant: What?

The Court: (Continuing)—that you take your seat.

[129] The Defendant: And then what?

The Court: And I'll ask the lawyer to proceed with the examination of the jurors.

The Defendant: You might do that but you just told me I could be my own lawyer, and I asked you for a continuance ten minutes ago.

The Court: You may be your own lawyer,—

The Defendant: That's right. I'm going to be.

The Court: (Continuing)—if you keep within bounds, but only under those circumstances.

The Defendant: You don't want me to tell the jury about he's only been my lawyer for six minutes, huh?

The Court: I don't want you to tell the jury anything at this time.

The Defendant: In other words, you just want me to stare at them, is that it?

The Court: You may ask proper questions, as I've told you, relating to their qualifications but nothing beyond that.

The Defendant: I think that's a real proper question to ask the man. I believe that's a real sensible thing to ask him.

The Court: The only question you've got before [130] you is competency and qualification of the juror.

The Defendant: That's right.

The Court: And limit your questions to that.

The Defendant: Seeing that it's going to be brang out during the trial that my lawyer is incompetent and that you people are forcing me up here to be my own lawyer, on my own will, but you're forcing him on me, I have no alternative but to become my own lawyer, when a man gets back there and talks to a person charged with a criminal thing for six minutes, there is no trial.

The Court: Just a moment. You have had several attorneys appointed.

The Defendant: That's right.

The Court: Being unable to get any for yourself,—

The Defendant: That's right.

The Court: (Continuing)— I've appointed Mr. Kelly here, who has been admitted to the Bar for a number of years.

The Defendant: I think that was very nice.

The Court: He served three years as a prominent trial attorney in the United States District Attorney's office here in Chicago.

[131] The Defendant: I'm aware of all that.

The Court: And he's been a fine lawyer in civil matters since then. He has a background of experience and of competency.

The Defendant: There is no doubt about that. Everything you said is true and you have given me these lawyers.

The Court: It has been reported to me that you made the statement back in the room there that you were going to take two weeks to get this jury—

The Defendant: I want you to prove that. Can you prove it?

The Court: Now, don't interrogate the court.

The Defendant: You're just prejudicing the jury against my making a remark like that. It's true, I'm going to have the jurors locked up. They're going to be locked up and stay locked up so these guys can't get to them. I'm going to keep them locked up in the jury quarters.

The Court: We'll determine that when the time arrives.

The Defendant: You ain't supposed to sit up there [132] and tell people about what you heard, what you can't prove it.

The Court: Well, I've only been on the bench 24 years and I've only practiced law over 50, and I think I will determine how the court is to be run.

The Defendant: Niemeyer, I know you are a good judge and I know you've been here for 24 years. Whether it's been 34 or 44, it don't make no difference to me. I believe you're a fair judge and that's why I'm here— because I believe you're one of the most competent judges in the building, you and Judge Dieringer, because I read the

statement you made against the State's Attorney and I figure you had a lot of nerve to make that statement. What I'm trying to explain to the jury is that I'm on trial for my life.

The Court: No, you're not. You're on trial for your liberty.

The Defendant: No. I'm on trial for my life.

The Court: You're on trial for your liberty. The crime against you is subject to punishment by one year to life in the penitentiary.

[133] The Defendant: No. You're wrong, your Honor, it's natural life.

The Court: Now you will proceed as I direct or you'll sit down and I will have counsel proceed with the selection of the jury.

The Defendant: Well, you start directing, then. I asked you to—

The Court: Proceed.

The Defendant: Can I address the court first? Seeing that you have the conversation swinging back and forth between me and you, I'd like to say something. I've asked the State's Attorney to supply me, as an order from Judge O'Connell's court, Judge Casey's—

The Court: No. We don't want to hear about that.

The Defendant: You're going to hear about it.

The Court: The court has passed upon it. Be seated.

The Defendant: There's no trial. If you try to make me sit down, there is going to be ranting in the courtroom and you'll have to carry me out, and I want to be present here at my trial all through the trial. I'm going to talk.

The Court: You will be permitted to be present
[134] at this trial—

The Defendant: That's right.

The Court: (Continuing)— so long as you conduct yourself in accordance with the law and with the dignity and propriety of the court and no longer.

The Defendant: Do you call that dignity, when the jurors are laughing and the State's Attorney is sitting up there smiling?

The Court: You'll be seated.

The Defendant: This is no joke. There will be no laughing in the courtroom.

The Court: Mr. Bailiff, seat the defendant.

The Defendant: But I'm not going to keep quiet. I'm just going to sit here and talk.

The Court: We'll see.

The Defendant: You'll see.

The Court: Mr. Kelly, you will proceed with the examination of this juror.

The Defendant: Kelly is not going to be my lawyer.

The Court: Proceed.

The Defendant: He's not going to be my lawyer and there's not going to be no mockery here, when he's
[135] bothering me. When I go out for lunchtime, you're going to be a corpse here.

The Court: Just a moment. Let the record show that the defendant tore the file, which his attorney had, and threw the papers on the floor.

One more outbreak of that sort and I'll remove you from the courtroom.

Proceed, Mr. Kelly.

The Defendant: And I have the right to be in the courtroom.

The Court: Proceed, Mr. Kelly.

The Defendant: You have the right to restrain me, but you haven't got the right to remove me and you're not going to remove me.

The Court: I'll determine that.

The Defendant: No, you're not. There's not going to be no trial, either. I'm going to sit here and you're going to talk and you can bring your shackles out and straight jacket and put them on me and tape my mouth, but it will do no good because there's not going to be no trial.

The Court: Proceed, Mr. Kelly.

Mr. Kelly: Q. Mr. Alexa, —

The Defendant: Kelly, I don't want you to handle [136] my trial. Now, get out of here.

The Court: Now, just a minute.

The Defendant: You were supposed to come and visit me in the County Jail, —

The Court: Just a moment.

The Defendant: (Continuing)— and the record shows that you did not visit me in the County Jail.

The Court: Mr. Bailiff, you will remove the defendant.

The Defendant: I want to be present in the courtroom when my trial is going on.

The Court: You may be present—

The Defendant: I'm going to be present.

The Court: (Continuing)— if you conduct yourself properly.

We will proceed, in the absence of the defendant, who, by reason of his conduct is interfering with the proper trial of the case, wilfully and deliberately.

(Thereupon, the defendant was taken out of the courtroom.)

Mr. Kelly: In order that the jurors, the prospective jurors, get a proper perspective, Judge Niemeyer appointed me as the attorney for Mr. Allen. Contrary to what [137] he said to you people, I visited him—

The Court: You needn't go into that, you needn't go into that. Just limit yourself to the proper examination of the jurors.

Mr. Kelly: I just want to apprise you people, you people who have been questioned, Mr. Alexa, Mr. Young, Mr. Drees and Mrs. Dahl, that it is the duty of you jurors, if you are selected, to try the issues here, to take the evidence as it comes off the witness stand.

What you have seen here before should not in any wise color your opinion. It's what comes off that witness stand that is important. And, in a criminal trial, you all are well familiar with the fact that the State must prove its case beyond a reasonable doubt. Allen, the defendant, has the assumption of innocence carried with him all the way up to the time you gather in the jury box and in your jury room for deliberation, at the conclusion of this case, after hearing both sides.

Now, I'll ask you, Mr. Alexa, if what you've seen [138] in any wise puts you in a frame of mind that you couldn't give Allen a fair trial.

Juror Alexa: No, sir.

Mr. Kelly: How about you, Mr. Young?

Juror Young: No, sir.

Mr. Kelly: Mr. Drees?

Juror Drees: (Nodding.)

The Court: Gentlemen, you'll have to speak up.

Juror Drees: No.

Mr. Kelly: Mr. Dahl?

Juror Dahl: I believe I can be impartial.

Mr. Kelly: You have no quarrel with the fact that, in a criminal case, the State must prove its case beyond a reasonable doubt?

Juror Dahl: No.

Mr. Kelly: Mr. Young, would your answers be the same?

Juror Young: Yes, sir.

Mr. Kelly: What you have seen transpire here—

Juror Young. Wouldn't affect me at all.

Mr. Kelly: And you can give Mr. Allen a fair and impartial trial?

Juror Young: Yes, I will.

Mr. Kelly: As you will the State.

[139] Juror Young: Both sides.

Mr. Kelly: Both sides?

Juror Young: Yes, sir.

Mr. Kelly: I will accept the panel.

The Court: Swear in the panel.

Mr. Kelly: Excuse me, they tendered four and I was going to accept the four.

The Court: Yes, the four. Swear the panel.

(Thereupon, the panel of four jurors was sworn to try the issues.)

• • • • •

[176] (Thereupon the following proceedings were had out of the presence and hearing of the jury:)

The Court: Will counsel step up? We'll recess until two o'clock.

Mr. Reddy (Asst. States Attorney): Judge, I just had a report that one of the officers in this case and, apparently, Allen—

Mr. Kelly: Had what?

The Court: I know all about it. He took off his shoes and broke a window and attempted to cut himself with it and he's been treated by the doctor.

Mr. Reddy: Officer Janousek. We're trying to get one of the witnesses, an F.B.I. agent, in. He said he didn't get the okay from Washington to appear in court and he asked if tomorrow morning is all right.

The Court: We'll have to see where we're going. But what I have in mind is that the jurors will go to lunch with the Bailiffs. He made a statement in regard that he wanted the jury locked up.

Mr. Kelly: Yes.

The Court: We better consider that before we adjourn this afternoon.

[177] And I wish you'd also advise him, at two o'clock, when the matter is resumed, that he may return to the courtroom, if he will agree to remain silent and obey the order of the court and respect the decorum of the court.

Mr. Kelly: I don't know if you want this on the record or not, but possibly if I could remove myself from the bench and stay over there (indicating), my presence wouldn't bother him.

The Court: I don't think it has anything to do with this.

Mr. Kelly: What I wanted to say is that in the matter of any objections, as to what I thought would be incompetent evidence, I could still make the objections for the record.

The Court: I haven't any objection to your sitting there, but unless he changes his mind radically, from the statements that he has made on previous hearings, it's his intention to obstruct the trial and to render it as ridiculous and impossible as possible. I just wanted you to be informed about that and to have those two questions in mind.

Mr. Kelly: Yes, your Honor.

* * * * *

2:00 O'Clock P.M.

Court convened pursuant to recess.

* * * * *

[179] The Clerk: William Allen.

(Thereupon, the following proceedings were had out of the presence and hearing of the jury):

The Court: Bring out the defendant William Allen.

(Thereupon, the defendant was brought into the courtroom.)

The Court: Mr. Allen, you were removed from the court this morning, as you know, because you refused [180] to permit the orderly procedure of the trial. The jury has been chosen and selected. We are now ready to proceed with the introduction of evidence, after the statements, if any, by counsel. You will be permitted to remain in the courtroom, if you will agree to conduct your-

self according to the decorum of the courtroom, in order that we may have an orderly trial and, namely, not interrupt the proceedings, as you were doing this morning, by your constant talking.

The Defendant: You ain't scaring me, Judge. I'm standing in this here courtroom, and I'm going to get a fair trial, and I'm not receiving a fair trial under these conditions. My lawyer does not know nothing about me. He only talked to me for six minutes and that's not good enough. I don't know what he's going to do.

The Court: All right, you refuse, then, to tell the court that you will behave yourself and not interfere with the introduction of the case?

The Defendant: I want to be in the courtroom at all times. Anytime anything is said about me in the courtroom, I want to be here, and I've got the right to be [181] in the courtroom, and I'm going to be here.

The Court: You have the right to be in the courtroom, if you behave yourself properly.

The Defendant: I'm calling that properly. That's what I call properly.

The Court: But you have no right to conduct yourself as you conducted yourself this morning.

The Defendant: I have the right to conduct myself anyway I see fit, when I'm getting an unfair trial—and this is an unfair trial. And the lawyer does not know nothing about me; and my sister and 20 other people have come over there and told me they want to be subpoenaed into court to try and help me. And where are they at? where are the subpoenas at? Where are my friends at? My sister don't even know I'm on trial today.

The Court: That's your fault, isn't it?

The Defendant: That's right. It is his fault, my lawyer's fault.

The Court: Very well, you may sit at the Bar.

The Defendant: I'm going to talk at the Bar, too. I'm going to sit there and I'm going to talk and I'm going to keep talking until someone hears me and does something about it.

The Court: You're going to keep on talking as you talked this morning?

The Defendant: I'm going to speak every time I have reason to speak, that's right.

The Court: Well, the court will be obliged to determine that. I'll give you another opportunity but that is all.

Let him be seated at the Bar, at the table, and we will proceed with the trial of the case.

Bring in the jury.

At the first interruption,—

(Thereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: Proceed.

Mr. Kelly: May it please the court, I would like to make a motion, on behalf of the defendant, to exclude the witnesses.

The Court: All witnesses will be excluded. One police officer may remain with the State's Attorney.

[183] (Witnesses excluded.)

The Court: Have you got all your witnesses out?

Mr. Kallick: Yes, your Honor.

The Defendant: Where are my witnesses at?

The Court: Proceed.

The Defendant: No. There is going to be no proceeding. I'm going to start talking and I'm going to keep on talking all through the trial. There's not going to be no trial like this. I want my sister and my friends here in court to testify for me.

The Court: Remove the defendant,—

The Defendant: I want to be in court.

The Court: (Continuing)— and we will proceed through the trial without his presence.

The Defendant: No, you're not going to proceed through the trial without my presence.

(Thereupon, the defendant was taken from the courtroom.)

The Court: Proceed.

[184] Opening Statement By Mr. Reddy:

May it please the court, counsel, ladies and gentlemen: At this time I would like to make an Opening Statement only for the purpose of giving you ladies and gentlemen an opportunity to follow the evidence. This is what we call a bird's eyerview of what the State intends to prove in this case.

We intend to prove, from that witness stand (indicating), from the testimony of people who were there, that, on the night or in the early morning at 3:00 A.M., in the City of Chicago, at approximately 825 West 69th Street, the defendant, armed with a weapon, walked in and said, "This is a stickup." And we intend to prove that beyond a reasonable doubt.

And that will be, particularly, the State's case. There won't be a great deal of witnesses. But what we feel here, we feel and we intend to prove beyond a reasonable doubt,

that the defendant in this cause is guilty of the charge in the indictment.

[185] If the court please, I'd like to call, as the first witness,—

The Court: Just a moment. The defense has not made an Opening Statement.

Mr. Reddy: If he wishes. I beg your pardon.

The Court: Proceed.

Opening Statement By Mr. Kelly:

May it please the court, ladies and gentlemen of the jury, since you have been sworn to try the issues in this cause, I again have the privilege of asking you to keep an open mind until you've heard all of the evidence that comes off that witness stand. In answer to your questions on the voir dire, you promised to give both sides a fair and impartial trial and I know you will do it. Please wait until all the evidence is in. Thank you very much.

The Court: Proceed.

Mr. Reddy: Will you call Mr. John Collins, Mr. Sheriff?

(Whereupon, the People of the State of Illinois, to maintain the issues on their part, offered and introduced [186] the following evidence, to-wit:)

JOHN COLLINS, a witness called on behalf of the People of the State of Illinois, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Reddy:

Q. Will you state your name, please, and keep your voice up so all these people can hear you?

A. John Collins.

Q. Where do you live, Mr. Collins?

A. I live at 8750 Throop Street.

Q. And that's in the City of Chicago, is it?

A. Right.

Q. Were you ever employed at the Club Maxine located at 825 West 69th Street in Chicago?

A. Yes, I was.

Q. How long were you so employed there?

A. I believe it was over a year.

Q. And, were you employed there at approximately 3:00 A.M., on August 12th, 1956?

A. Yes, I was.

[187] Q. What, if anything, unusual took place at that time, if you recall?

A. Well, at that time, almost about 3:00 o'clock in the morning, just before closing time, I had some customers at the bar and this man walked in.

Q. How many customers, if you remember?

A. About 15, I'd say.

Q. Yes? And then what happened?

A. This man walked in the front door and walked all the way to the other end and asked for a drink. And, when I served him, he got a pistol on me and told me to give him the money that was in the register, which I did.

Q. Now, how much money did you give him from the register?

A. Oh, approximately \$200.00 or more.

Q. Did you take anything else?

A. Nothing else.

Q. How long was he in the room or in the bar or at the bar?

A. About five minutes.

Q. Was it lighted up?

A. Yes, it was.

[188] Q. Was he wearing a hat at that time?

A. No.

Q. Could you see him very well?

A. Yes.

Q. When was the next time you saw the defendant in this cause?

A. On the next afternoon.

Q. At what time?

A. About 5:00 o'clock in the afternoon.

Q. And where did you see him at?

A. 11th and State.

The Court: Q. That's the police station?

A. The police station, yes, sir.

Mr. Reddy: Q. Did you see him in a showup at that time?

A. Yes, I did.

Q. How many men were in that showup, if you recall?

A. I believe five.

Q. Did you have a conversation with the defendant in this cause at that time?

A. No.

Q. Did he say anything to you at all?

A. He pointed me out as the fellow who he had stuck up the night before.

[189] Q. He said to you that he stuck you up?

A. Yes.

Q. Was there anybody else with you at that time?

A. Yes. The boss of the place where I worked.

Q. What's his name?

A. Pat McDonald.

Q. Was he present at that time?

A. Yes.

Q. And did you identify him in the showup?

A. Yes, I did.

Q. And everything you have testified to happened in the City of Chicago and the County of Cook and the State of Illinois?

A. Yes, sir.

Mr. Reddy: That's all. Cross.

The Court: Just a moment.

Bring in the defendant.

Mr. Reddy: We haven't been able to identify him.

(Thereupon, the defendant was brought into the courtroom.)

The Court: Stand right there.

The Defendant: Right here on the spot?

The Court: Turn around, please?

[190] Go ahead.

Mr. Reddy: Q. Now, Mr. Collins, I'm going to ask you, in front of this jury, is this the man that you saw at the showup, William Allen, the defendant in this cause?

A. This man here.

Q. Is this the man that identified you as having stuck you up?

A. Yes.

Q. You heard him say that and you identified him in the presence of Mr. McDonald, is that correct?

A. That's right.

Mr. Reddy: That's all.

The Court: All right, take him back.

The Defendant: I want to stay in the courtroom.

The Court: You may stay whenever you promise me to conduct yourself properly.

The Defendant: I'll promise you shit.

(Thereupon, the defendant was taken out of the courtroom.)

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(Direct examination of Patrick J. McDonald, a witness called on behalf of the People.)

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[204] When was the next time, if any, that you saw the man that put the gun to John Collins?

A. The same day, 5:00 o'clock that afternoon, at the Detective Bureau, at 11th and State Street.

Q. Was there any conversation, in the presence of this man that put the gun to John Collins, and yourself and any police officer?

A. There was. The fact that he identified us as the people that he had robbed.

Q. Well, can you remember, to the best of your recollection, what words he used?

A. They asked him if he had ever seen John Collins before, and he said that he had, that he had held him up the night before.

Q. Did you identify him as the man that had stuck up John Collins at that time?

A. No. He identified me as the man.

Q. He identified you?

A. They asked him if he recognized me, and he says, "He seems familiar. I must have stuck him up at some time or other."

Mr. Reddy: Judge, would you bring out the defendant?

The Court: All right, bring out the defendant.

(Thereupon, the defendant was brought into the courtroom.)

Mr. Reddy: Q. Now, Mr. McDonald, for the purpose of the record in this cause, do you see anyone in the courtroom that you saw on August the 12th, 1956, at approximately 3:00 A.M.?

A. Yes, sir.

Q. Will you point him out, please?

A. (Indicating.)

Mr. Reddy: Indicating, for the record, the defendant William Allen.

The Witness: William Allen.

Mr. Reddy: Q. And, for the record, also, sir, is this the same man that you identified in the afternoon of [206] August the 12th, 1956, at a showup?

A. He is.

Q. And is this the same man that identified Mr. Collins, as having stuck him up, in your presence?

A. That's right.

Q. And everything you testified to happened in the County of Cook?

A. Yes, sir.

Mr. Reddy: Cross examine.

(Thereupon, the defendant was taken out of the courtroom.)

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(Direct examination of Harold Sell, a witness called on behalf of the People.)

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[228] The Court: Just a moment. Do you want to identify the defendant?

Mr. Kallick (Asst. States Attorney): Yes.

The Court: Bring back Mr. Sell.

Bring in the defendant.

Will you take the witness chair, please?

(Thereupon, the defendant was brought into the courtroom.)

HAROLD SELL, resumed the stand and testified further as follows:

Further Direct Examination by Mr. Kallick:

Q. Mr. Sell, the defendant in this case, William Allen, now before the Bar,—is that the same William Allen whom you arrested on the date specified, August 12th?

A. Yes, it is.

Mr. Kallick: That's all.

(Thereupon, the defendant was taken out of the courtroom.)

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(Direct examination of Vernon Dolan, a witness called on behalf of the People.)

* * * * *

[244] (Thereupon, the defendant was brought into the courtroom.)

Further Direct Examination by Mr. Kallick:

Q. Mr. Dolan, I'm asking you to observe the defendant in this case, William Allen, who has been brought into court. Is this the same William Allen whom you spoke to on August 12th and about whom you testified?

A. He is.

Mr. Kallick: Thank you, that's all.

May he remain for one more question?

The age of the defendant? Can we have the age of the defendant?

Mr. Kelly: Ask him.

The Court: How old are you?

Mr. Kallick: Will you stipulate as to the age of the defendant? May we stipulate to the defendant's age?

[245] Mr. Kelly: I cannot stipulate.

The Court: Very well. Step aside.

(Thereupon, the defendant was taken out of the courtroom.)

* * * * *

[252] THE PEOPLE OF THE STATE OF ILLINOIS

vs.

WILLIAM ALLEN

Indictment No. 56-1629.

Before Judge GROVER C. NIEMEYER and a Jury.

Thursday, December 12th, 1957,

10:00 o'clock A.M.

Court convened pursuant to adjournment.

PRESENT:

Hon. Benjamin S. Adamowski, State's Attorney of Cook County, by Mr. Sidney Kallick and Mr. William Reddy, Assistant State's Attorneys, appeared for the People; Mr. John J. Kelly, Jr., appeared for the defendant, and William Allen, the defendant, appeared pro se.

The Clerk: William T. Allen.

The Court: Bring in the defendant.

(Thereupon, the following proceedings were had out of the presence and hearing of the jury:)

A Deputy Sheriff: Mr. Kelly wants a few more minutes with him.

The Court: All right.

(A recess was taken, after which the following proceedings were had:)

The Court: Are you ready?

Mr. Kelly: Yes, your Honor.

The Court: All right, bring in the defendant. (Thereupon, the defendant was brought into the courtroom.)

The Defendant: I told you to be here yesterday.

Good morning.

The Court: We're ready to proceed with the defendants in this case. If you will assure the court that you will behave yourself, conducting yourself in a manner consistent with the decorum of the court, which is necessary for a fair and effective trial, you may remain in the courtroom.

The Defendant: Well, I'd like to say something about yesterday. I might have got a little carried away. But you see this here handcuff on me (indicating)—

The Court: Yes.

The Defendant: (Continuing)—and these police escort next to me. Yesterday I was handcuffed to the Warden of the Cook County Jail and the Chief Bailiff, Mr. McGuffage, and I've got this uniform stamped all over

[254] it, in ten different places, "Maximum security," and

that is not exactly what a person looking at me would call an innocent person.

You don't want to listen to me?

The Court: I want to know whether or not—

The Defendant: I'm getting around to whether or not I'm going to cooperate—

The Court: All right. Then go ahead.

The Defendant: (Continuing)—and behave myself.

But when I'm walking around here and sitting before the jury and I don't know what to say, and I'm afraid, anyway, because my lawyer don't know me, he don't know nothing about me, and the man has never spoken to me only for about two mintues, I don't know, I just don't know. And yesterday it proved that he was unprepared to defend me, because my sister and my brother and all my friends weren't in court to try and help me. And, under this heavy police escort, all these people and cops standing around here, I mean, I'm nervous and I don't like them

standing around me. I know you're a good judge, Nie-
[255] meyer, because I read about you in the paper and you
and Dieringer are all right with me, but all I want is
a fair trial.

The Court: I want to give you a fair trial but I must
insist on proper conduct and decorum in the courtroom.
I gave you an opportunity yesterday and you didn't take
advantage of it. You went far beyond bounds. We have
now reached the point where we're putting in the defense.
And if you will promise the court to behave yourself, con-
duct yourself properly, I'll permit you to remain, other-
wise—

The Defendant: If you would let me ask my sister
what to do. I don't know what to do. My sister is sitting
behind me, on my left hand side, with my brother back
there.

The Court: If you want to talk to your sister for a few
minutes in the jury box, I'll let you talk to her.

The Defendant: I don't know what to do. Put her there
and release me from these shackles.

The Court: What's her name?

[256] The Defendant: My sister Louise.

Mr. Kelly: Mrs. Robertson.

The Court: Mrs. Robertson.

The Defendant: I don't see why she has to be made a
spectacle in the jury box. Why don't they send a couple
of cops back in the judge's chambers?

The Court: Please let us follow our usual practice.

The Defendant: Release me from these shackles. I
mean, I'm standing.

The Court: No.

The Defendant: I'm standing right here. There are enough police and guns in the courtroom. I know I'm dangerous but I'm not that dangerous, if I gave my word that I'll be cooperative for these few minutes here with my sister, if he releases me.

My word's good, ain't it?

The Court: I am not going to permit you to have a talk here with your sister—

The defendant: You just said it then.

The Court: (Continuing)— out of the presence of the Sheriff.

The Defendant: In other words, you want me to [257] stand here and tell my sister—

The Court: No. You may sit there in the jury box and talk to her.

The Defendant: In a private conversation?

The Court: You may talk to her. The other people in the courtroom are not going to hear, but I'm not going to ask the Sheriff to release you from the handcuffs.

The Defendant: This handcuff actually isn't doing nothing. If I wanted to get loose from it, it's simple.

The Court: All right. Then it's interfering with nothing. You may go over there and talk with her.

The Defendant: He said let go.

Did you tell him to let go?

The Court: No.

The Defendant: Then, no, I'm not going to have no police escort making a fool out of me and my family.

The Court: I'm not going to let them make a fool out of you or your family.

The Defendant: Let him send them back to the bullpen.

I want to talk to my sister.

[258] The Court: I offer you an opportunity to talk to your sister.

The Defendant: She ain't going to throw me no gun.

Judge, with these two people, just for the record, anything they hear can't be used against me?

The Court: It will not be permitted.

The Defendant: This is Sgt. Seminara (indicating) from the Cook County Jail and this is Mr. McGuffage (indicating) one of the Chief Bailiffs.

The Court: I told you it will not be permitted to be used.

Mr. Kelly: The lady has been subpoenaed as a witness. Can she go back in the witness room, in view of the order excluding witnesses?

The Court: When we get ready to proceed, yes.

The Defendant: Subpoena my brother, while he's here, if you want.

Mr. Kelly: At this time, your Honor, I want to make a motion—

The Court: Now, just a moment. I've got a matter pending here as to whether or not you will assure [259] the court—

The Defendant: I'm telling the court this: I want another lawyer. My sister just told me that Kelly did not say none of them statements to her. She told me that Kelly was not a good lawyer, and she advised me not to cooperate with him because he's trying to get me in trouble, he's trying to get me sent to the penitentiary or an insane

asylum, or something of that sort, and I shouldn't cooperate with him. However, I want to stay in the courtroom and explain to the people what happened.

The Court: You will not be permitted to make any statements in court, except as you may be examined as a witness, if you are called; and that, of course, is a matter entirely within your judgment.

The Defendant: Well, I don't think that it would be very wise for me to make a statement or another outburst in court like I did last night. I don't think that would be very wise, because if I do—

The Court: All right. If you will assure me that [260] you will not disturb the proceedings, I'll permit you to remain.

The Defendant: I'm going to tell you this: I'm not going to disturb the proceedings of the court, because I was told if I did, when I get back over here in the bullpen, they're going to hit me in my head. That's why I'm not going to disturb, because I'm afraid. I'm going to sit down and I'll be quiet, so you won't hit me in the head. Because I know, when I got back in the bullpen, they've got the bullpen on me and they told me what will happen. I'll sit down and be quiet, and I'm not going to say nothing, because I know what will happen to me, if I do.

The Court: Very well, be seated at counsel table and we'll proceed with the trial.

* * * * *

[287] (A recess was taken, after which the following proceedings were had:)

The Court: Bring in the defendant and then bring in the jury.

(Thereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: Call the next.

Mr. Kelly: Mr. Allen to the stand.

The Defendant: Take the handcuffs off.

The Court: Remove the handcuffs.

The Defendant: I'm not supposed to have handcuffs on in court, anyway. That's what they tell me, anyway. And it hurts my arm, anyway, unless I would smack one of you in the mouth and then you could put them on.

The Court: All right. Just confine yourself to answering the questions put to you.

* * * * *

(December 13, 1957; further proceedings of the trial.)

* * * * *

[413] (Thereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: Did you arrive at a verdict?

The Foreman: Yes, your Honor.

The Court: Deliver it to the Bailiff.

Read the verdict.

The Clerk: "We, the jury, find the defendant, WIL-

LIAM ALLEN, guilty in manner and form as charged in the indictment. And we further find from the evidence that the said defendant, WILLIAM ALLEN, is now about the age of 25 years."

It's signed by George Alexa, foreman of the jury and the eleven other jurors.

The Court: It will be received and entered.

The jury may retire.

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[420] The Court: He will be sentenced to the penitentiary for a minimum term of ten years and a maximum thirty.

**OPINION OF THE SUPREME
COURT OF ILLINOIS**

Docket Nos. 38195, 39047 cons.—Agenda 3—January,
1967.

The People of the State of Illinois, Appellee, v. William
Allen, Appellant.

PER CURIAM: Although this cause is a consolidation of defendant William Allen's writ of error from a jury conviction for robbery, and his appeal from the dismissal of his post-conviction petition in regard thereto, he argues solely the appeal from the judgment of conviction. Since both are founded upon substantially the same claims of error and contentions, we believe justice will be served by considering the matter as argued.

It is uncontroverted that on August 12, 1956, at about 3:00 A.M., defendant entered a tavern and after ordering a drink took \$200 from the bartender at the point of a pistol. Later that day he was arrested and identified by the bartender and, conversely he identified the bartender as the man he had robbed.

In a 1956 pretrial sanity hearing, defendant was found incompetent to stand trial. Approximately a year later, on October 19, 1957, in a second competency hearing, the defendant, represented by the public defender, was declared sane and competent to stand trial. Thereafter, defendant expressed dissatisfaction with the public defender and informed the court he had an attorney of his own choice. However, when no attorney appeared in his behalf and upon his statement to the court that he did not wish to represent himself, he was offered the choice of the public defender or an attorney from the bar association defense

committee. He refused both and requested one from a list of attorneys he presented. The court refused this request and indicated it would appoint a lawyer from the bar association, whereupon defendant requested that he be allowed to represent himself. The court granted this request and in addition thereto appointed the bar association attorney to assist and advise in order "to protect the record."

In his attempted *voir dire* examination of the jurors, defendant indicated a lack of knowledge of the law and procedure involved and by his improper and inadequate conduct it became apparent that the judicial process was deteriorating. Upon the court's suggestion that counsel take over the examination, defendant became boisterous, unruly and persisted in proceeding personally, refusing to remain quiet. At one point he tore up the attorney's file and threw the papers to the floor. When the court failed in its efforts to have the trial proceed with dignity and decorum, it ordered defendant removed from the courtroom and directed the attorney to proceed in defendant's behalf. After the jury was selected, defendant was allowed to return and participate in his trial but before the examination of State's witnesses he resumed his unruly and derogatory conduct, refusing to abide by the court's directions. He was again excluded and not allowed in the courtroom during the presentation of the State's case except when brought in, under guard, to be viewed by the State's witnesses.

Defendant was permitted in the courtroom, shackled, during the presentation of his defense but was not allowed to conduct his own defense. The record before us indicates that the trial court made every effort to control him, and that the shackling appeared to be a necessary measure to accomplish this end.

The only evidence in defense consisted of the testimony of defendant's sister and brother and of the defendant himself reciting his specific acts of misconduct and unusual past behavior, and further testimony that he was confined to a mental institution in 1953.

On rebuttal, Dr. William Haines, Director of the Criminal Court Behavior Clinic, testified that he had examined Allen on several occasions from September 11, 1956, to September 7, 1957, and that in his opinion defendant was legally sane on each occasion.

The jury was instructed on the question of guilt, non-guilt and insanity and was given three forms of verdicts: guilty, not guilty, and insane at the time of the commission of the crime. The jury returned a verdict finding Allen guilty of the crime as charged.

On appeal, defendant claims "he was deprived of his right to be present at his own trial, denied the right to confront the witnesses against him, and deprived of his liberty without due process of law." Additionally, he contends that "he was insane at the time of the commission of the robbery and/or at the time of the trial. If he was sane at the time of his trial he had the right to conduct his own defense, which right was denied."

The law is clear that an accused has the right to appear and defend in person as well as by counsel; that he has a right to confront the witnesses against him, and that he is entitled to be present and to participate at every stage of the trial. Where the accused is not present in person, the error is not cured by the presence of counsel, as his attorney has no power to waive his right to be present. (*People v. Smith*, 6 Ill. 2d 414, 416.) It is also well established that these constitutional privileges were conferred for the benefit and protection of the accused but, like

many other rights, they may be waived by him. In *People v. DeSimone*, 9 Ill. 2d 522, 533, we held that the court did not exceed its legitimate powers when it proceeded while the accused voluntarily absented himself from the trial and that "The same result must follow under the circumstances attending this defendant's involuntary absence. It is obvious from the record that defendant's removal was necessary to prevent such misconduct as would obstruct the work of the court; such misconduct was, in turn, effective as a waiver of the defendant's right to be present. The right to appear and defend is not given to a defendant to prevent his trial either by voluntary absence, or by wrongfully obstructing its progress."

We have said on occasion that the reasonable limits to which a judicial opinion must be confined may not permit a complete or detailed analysis of each and every act of the defendant which may have resulted in the trial court's action. This applies in the instant case. The record is replete with rude, boisterous and disrespectful conduct of the defendant toward the court and its orders. The trial judge was both patient and tolerant, and his exclusion of the defendant was justified. It was only when he became unruly that the court instructed the lawyer to conduct the defendant's *voir dire* examination. It is sufficient to say that the record reflects defendant's awareness of his right to conduct his own defense and his deliberate attempt to use this right to obstruct the trial. By such conduct, he waived any constitutional rights to be present, confront the witnesses against him and conduct his own case at the times he was excluded from the courtroom. Therefore, we find that the court did not err in excluding the defendant and delegating the attorney to represent his interest in his absence.

We further find that the court's designation of an attorney to assist and advise defendant at all stages of the trial was within its discretion and did not infringe upon his right to defend himself. For, as held in *People v. Burson*, 11 Ill. 2d 360, 373, the defendant's right to defend himself is subject to the constant duty of the court to protect the judicial process from deterioration occasioned by improper and inadequate conduct of the defense. In such situation the court possesses broad discretion in relation to the appointment of counsel for advisory or other limited purposes or to supersede the defendant in the conduct of the defense. Continuous supervision of the trial is required in order to maintain proper judicial decorum to the end that defendant may receive a fair trial.

We turn now to a consideration of defendant's contention that "he was insane at the time of the commission of the robbery and/or at the time of trial."

There is no basis in the record to support defendant's contention with respect to his sanity at the time of trial. Defendant was given a proper pretrial sanity hearing and the jury found him competent. Defendant did not at that time question the jury's finding and he does not now advance any reasons why that finding should be overturned.

With respect to the question of defendant's sanity at the time of the commission of the offense, the record discloses that the witnesses for the defense gave no opinion as to his sanity at any time but merely testified to his specific acts of misconduct and unusual past behavior. Although the further fact was established that defendant was confined to a mental institution in 1953, no reason for such confinement was given. The only expert witness to testify, Dr. Haines, who examined the defendant shortly after the commission of the crime and on other subsequent oc-

casions, stated that, in his opinion, the defendant was legally sane at the time of each examination.

The question of the defendant's sanity at the time of the commission of the offense was a matter for the jury. (*People v. Le May*, 35 Ill. 208.) We find that the jury was properly instructed on this question; therefore, its verdict of guilty was a determination that defendant was sane at the time of the commission of the offense.

Finding no error was committed in the trial of this cause, the judgments of the circuit court of Cook County are hereby affirmed.

Judgments affirmed.

Mr. JUSTICE WARD took no part in the consideration or decision of this case.

OPINION OF THE DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA
ex rel WILLIAM ALLEN,

vs.

STATE OF ILLINOIS

No. 68 C 316

MEMORANDUM OPINION AND ORDER

William Allen, relator in this cause, was granted leave to file his petition for a writ of habeas corpus in forma pauperis. Mr. H. Reed Harris, who represented relator before the Illinois Supreme Court, was appointed as counsel for him.

Relator presently is serving a sentence of ten to thirty years for armed robbery imposed by the Criminal Court of Cook County on December 13, 1957, after a jury trial. The judgment of conviction was affirmed by the Illinois Supreme Court on March 29, 1967, in 37 Ill. 2d 167, 226 N.E. 2d 1 (1967); certiorari was denied, No. 426 Misc., Oct. Term, 1967.

The sole contention before this Court is whether Allen's right to be present during his criminal trial was denied. The issue of insanity is not raised in the petition. The petition does not dispute the recitation of facts contained in the opinion of the Illinois Supreme Court, and, there-

fore, those facts are adopted herein. It will not be necessary to reiterate those facts, since they are clearly set out in *People v. Allen*, 37 Ill. 2d 168-173.

The law of the State of Illinois on the issue of defendant's right to be present at his criminal trial coincides with the Federal laws as established in *United States ex rel Shapiro v. Jackson*, 263 F. 2d 282 (2d Cir. 1959), *U.S. v. Switzer*, 252 F. 2d 139 (2d Cir. 1958), *Parker v. United States*, 184 F. 2d 488 (4th Cir. 1950). Even in the Federal Courts, limited exceptions to an accused's absolute right to be present throughout his trial are permitted.

The relator's conduct during the trial of his case in the Circuit Court of Cook County was rude, boisterous, and disrespectful toward the court and its orders, according to the opinion of the Supreme Court at 37 Ill. 2d 169-171. Such conduct certainly justified the trial judge's removal of relator during the *voir dire* examination, and at other times, and it also constituted a waiver of relator's right to be present. Allen's court-appointed attorney conducted the defense of the case both during his absence and while he was present.

The Court finds it unnecessary to direct the respondent to reply to the petition. A review by this Court, on its own motion, reveals that the petition, on its face, read in the light of the references therein, fully discloses the petition itself to be patently frivolous. Leave to proceed in forma pauperis should not have been granted. The order granting the same is hereby vacated and the cause is dismissed. (28 U.S.C. § 1915)

ENTER:

James B. Parsons (signed)

United States District Judge

Date: May 24, 1968.

NOTICE OF APPEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA
ex rel WILLIAM ALLEN,

Plaintiff,

vs.

STATE OF ILLINOIS,

Defendant.

No. 68 C 316

NOTICE OF APPEAL

To: John J. Stamos, State's Attorney, Chicago Civic Center, Chicago, Illinois; William G. Clark, Attorney General, 160 North LaSalle Street, Chicago, Illinois.

Notice is hereby given that WILLIAM ALLEN, plaintiff in the above captioned matter, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this proceeding on May 24, 1968, and requests the Clerk to certify the complete record to the United States Court of Appeals Seventh Circuit.

DATED: July 25, 1968.

H. REED HARRIS,
Attorney for William Allen,
39 South LaSalle Street,
Chicago, Illinois 60603
Telephone: 346-4530

OPINION OF THE COURT OF APPEALS
IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1968

APRIL SESSION, 1969

No. 17166

UNITED STATES OF AMERICA *ex rel.*,
 WILLIAM ALLEN,
Petitioner-Appellant,

v.

STATE OF ILLINOIS,
Respondent-Appellee.

} Appeal from the
 United States Dis-
 trict Court for the
 Northern District
 of Illinois, Eastern
 Division.

JULY 7, 1969

Before HASTINGS, *Senior Circuit Judge*. KILEY and SWYGERT, *Circuit Judges*.

SWYGERT, *Circuit Judge*. This is an appeal from the district court's dismissal of a habeas corpus petition filed by William Allen who is presently serving a ten to thirty year sentence in the Illinois State Penitentiary. The sentence was imposed by the Criminal Court of Cook County following the petitioner's conviction for armed robbery.

The question presented is whether the petitioner was denied his constitutional rights under the sixth amendment by reason of his forceable exclusion from the courtroom during part of his trial.

After his indictment and during the pretrial stage, the petitioner refused court-appointed counsel and indicated to the trial court on several occasions that he wished to conduct his own defense. After considerable argument by the petitioner, the trial judge told him, "I'll let you be your own lawyer, but I'll ask Mr. Kelly [court-appointed counsel] [to] sit in and protect the record for you, insofar as possible."

The trial began on September 9, 1956. After the State's Attorney had accepted the first four jurors following their voir dire examination, the petitioner began examining the first juror and continued at great length. Finally the trial judge interrupted the petitioner, requesting him to confine his questions solely to matters relating to the prospective juror's qualifications. At that point, the petitioner started to argue with the judge in a most abusive and disrespectful manner. At last, and seemingly in desperation, the judge asked appointed counsel to proceed with the examination of the jurors. The petitioner continued to talk, proclaiming that the appointed attorney was not going to act as his lawyer. He terminated his remarks by saying, "When I go out for lunchtime, you're [the judge] going to be a corpse here." At that point he tore the file which his attorney had and threw the papers on the floor. The trial judge thereupon stated to the petitioner, "One more outbreak of that sort and I'll remove you from the courtroom." This warning had no effect on the petitioner. He continued to talk back to the judge, saying, "There's not going to be no trial, either. I'm going to sit here and you're going to talk and you can bring your shackles out and straight jacket and put them on me and tape my mouth, but it will do no good because there's not going to be no trial." After more abusive remarks by the petition-

er, the trial judge ordered the trial to proceed in the petitioner's absence. The petitioner was removed from the courtroom. The voir dire examination then continued and the jury was selected in the absence of the petitioner.

After a noon recess and before the jury was brought into the courtroom, the petitioner, appearing before the judge, complained about the fairness of the trial and his appointed attorney. He also said he wanted to be present in the court during his trial. In reply, the judge said that the petitioner would be permitted to remain in the courtroom if he "behaved [himself] and [did] not interfere with the introduction of the case." The jury was brought in and seated. Counsel for the petitioner then moved to exclude the witnesses from the courtroom. The defendant protested this effort on the part of his attorney, saying: "There is going to be no proceeding. I'm going to start talking and I'm going to keep on talking all through the trial. There's not going to be no trial like this. I want my sister and my friends here in court to testify for me." The trial judge thereupon ordered the petitioner removed from the courtroom. The petitioner was again taken out of the courtroom and the trial proceeded. He was kept from the courtroom throughout the presentation of the prosecution's case except to be brought into the courtroom on four separate occasions in order to be identified by different witnesses. On each occasion he was immediately removed after the identification.

The petitioner was permitted in the courtroom during the presentation of his defense which was conducted by the appointed counsel.

In a consolidated appeal from the petitioner's conviction and a dismissal of his post-conviction petition in regard thereto, the Illinois Supreme Court affirmed. *People*

v. *Allen*, 37 Ill. 2d 167, 226 N.E. 2d 7 (1967). Certiorari was denied by the Supreme Court. *Allen v. Illinois*, 389 U.S. 907 (1967).

A defendant in a criminal proceeding has the unqualified right to be personally present at all stages of his trial. *Hopt v. Utah*, 110 U.S. 574 (1884); *Shields v. United States*, 273 U.S. 583 (1927). Although the Supreme Court has indicated that this right cannot be waived either by a defendant or his counsel, *Lewis v. United States*, 146 U.S. 370 (1892), there may be instances when a defendant who voluntarily absents himself from a trial effects a waiver of this right. For example, in *Parker v. United States*, 184 F. 2d 488 (4th Cir. 1950), the defendant was injured in an automobile accident during his trial. Neither the court nor counsel knew of the accident and assumed that the defendant had misunderstood the hour when court convened or had been temporarily delayed. The defendant's counsel suggested that the trial proceed and five witnesses were examined before it was learned that the defendant's absence had been caused by his injuries. The Fourth Circuit held that since the defendant had immediately been furnished a transcript of the five witnesses' testimony and did not object to their testimony or request that they be examined further, he voluntarily waived his right to be present during their examination. Certainly, if a defendant in a criminal case absconds during his entire trial or voluntarily and without excuse absents himself from the courtroom, he may waive his right to be present. But that is not this case. Here the defendant repeatedly demanded that he remain in the courtroom and on both occasions objected to his exclusion.

The Supreme Court of Illinois viewed the offensive conduct of the defendant as constituting a waiver of "any [of

his] constitutional rights to be present, [and] confront the witnesses against him. . . ." We respectfully disagree. A waiver, whether express or implied, denotes a voluntary, intentional relinquishment of a known right. *Johnson v. Zerbst*, 304 U.S. 458 (1938). It is essentially unilateral in character. A relinquishment of rights by waiver that is compelled by an election of choices is involuntary and not a waiver at all. The choice given the petitioner in the instant case by the trial judge, either to behave or be expelled from the courtroom, compelled the petitioner to involuntarily "waive" a constitutional right. No conditions may be imposed on the absolute right of a criminal defendant to be present at all stages of the proceeding. The insistence of a defendant that he exercise this right under unreasonable conditions does not amount to a waiver. Such conditions, if insisted upon, should and must be dealt with in a manner that does not compel the relinquishment of his right.

In light of the decisions in *Hopt v. Utah*, 110 U.S. 574 (1884) and *Shields v. United States*, 273 U.S. 583 (1927), as well as the constitutional mandate of the sixth amendment, we are of the view that the defendant should not have been excluded from the courtroom during his trial despite his disruptive and disrespectful conduct. The proper course for the trial judge was to have restrained the defendant by whatever means necessary, even if those means included his being shackled and gagged. *United States v. Bentvena*, 319 F. 2d 916 (2d Cir.), cert. denied, 375 U.S. 940 (1963); *People v. Loomis*, 27 Cal. App. 2d 236, 80 P. 2d 1012 (1938).¹

¹An additional technique available to the trial judge for controlling the defendant's behavior was his contempt power.

Although we sympathize with the plight of the judge in the instant case and think he showed commendable patience under severe provocation, we nonetheless are of the opinion that he interfered with the defendant's constitutional rights. For that reason, we are compelled to hold that the petitioner's conviction is invalid.

The Court expresses its appreciation to H. Reed Harris, a member of the Illinois bar, for his excellent services as court-appointed counsel for the appellant.

The dismissal order of the district court is reversed.

HASTINGS, *Senior Circuit Judge* dissenting.

With deference to the distinguished majority, I feel compelled to dissent from its holding in this case. The majority opinion correctly recites the factual situation concerning petitioner Allen's gross misconduct during his trial in the Criminal Court of Cook County, Illinois. I read the constitutional mandates applicable thereto in a light different from my brethren.

The Sixth Amendment provides that "In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him." Defendant was given that right in this case, but made his own free choice to voluntarily reject his enjoyment of it.

The majority mildly characterizes the trial judge's admonition to the defendant as "either to behave or be expelled from the courtroom." Later it recognizes the extremes to which the judge went to preserve some semblance of order in the court. My reading of the undisputed facts indicates to me that defendant was brazenly determined to make a shambles of the criminal judicial

process, unless he was permitted to dictate the rules of the game. Witness his threat, after much preliminary blatant misconduct, including a warning to the trial judge that at lunchtime the judge was "going to be a corpse here," when he said:

"There's not going to be no trial, either. I'm going to sit here and you're going to talk and you can bring your shackles out and straight jacket and put them on me and tape my mouth, but it will do no good because there's not going to be no trial."

Later, at his request, defendant was permitted to be present in court again, and made a similar threat to the judge that he would prevent the trial from proceeding.

The majority states that a "defendant in a criminal proceeding has the unqualified right to be personally present at all stages of the trial," and concludes as a matter of law that "No conditions may be imposed on the unqualified right of a criminal defendant to be present at all stages of the proceedings." I cannot accept the thesis that such an unconditional unqualified right in all criminal cases flows from the constitutional mandate of the Sixth Amendment.

The majority then proposes this unusual remedy for such an intolerable situation, — "The proper course for the trial judge was to have restrained the defendant by whatever means necessary, even if those means included "his being shackled and gagged." We all recognize that shackling and gagging a defendant has been judicially approved in certain circumstances. However, I respectfully suggest that such an after the fact holding on appeal is a far cry from the holding here that the failure of the trial judge to take such steps constituted such an inter-

ference with the defendant's constitutional rights as to invalidate his conviction.

I further suggest that if the majority holding becomes a prevailing constitutional precedent, then imagine the result that may occur in a criminal trial of multiple defendants who determined "to raise hell" and disrupt the trial to the point of no return. Shackles, chains, gags and a courtroom full of deputy marshals engaged in trying to keep the defendants off the floor may prove to be the climax in following "the proper course." I cannot believe the Federal Constitution requires that any such farce take place.

Neither can I believe that the Sixth Amendment's grant to an accused that he "shall enjoy the right" carries with it an unqualified right to have it on his own terms and that no conditions may be imposed thereon. Thus, the majority in effect says that a defendant has a right to be present at his trial and at the same time rules that the bedevilled trial judge must enforce this right upon the defendant by violent physical means, if necessary.

The majority puts forward a footnote alternative that an additional technique available to the trial judge for controlling the defendant's behavior is the use of the court's contempt power. I fail to see how the threat of punishment for contempt would restrain those determined to destroy the trial proceeding in progress. Defendant and his kind could care less.

The majority opinion properly recognizes those cases holding that a defendant who voluntarily absents himself from a trial effects a waiver of his right to be present. I find myself in agreement with the Supreme Court of Illinois, in upholding defendant's conviction, when it

equates a voluntary absence from the trial with circumstances leading to this defendant's involuntary absence. *People v. Allen*, 37 Ill. 2d 167 (1968). In either situation, a defendant by his own action brings about his absence from the trial.

Under the facts of this case, I would hold that the state trial judge did not err in his conduct of defendant's trial and that the district court properly dismissed defendant's petition for a writ of habeas corpus. I would affirm.

A true Copy:

Teste:

*Clerk of the United States Court of
Appeals for the Seventh Circuit.*

ORDER OF REVERSAL
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Monday, July 7, 1969

Before

HON. JOHN S. HASTINGS, *Senior Circuit Judge*

HON. ROGER J. KILEY, *Circuit Judge*

HON. LUTHER M. SWYGERT, *Circuit Judge*

No. 17166

UNITED STATES OF AMERICA

ex rel. WILLIAM ALLEN,

Petitioner-Appellant,

vs.

STATE OF ILLINOIS,

Respondent-Appellee.

} Appeal from the
the United States
District Court for
the Northern Dis-
trict of Illinois,
Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the dismissal order of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, in accordance with the opinion of this Court filed this day.

ORDER DENYING REHEARING
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Tuesday, August 12, 1969

Before

HON. LATHAM CASTLE, *Chief Judge*

HON. JOHN S. HASTINGS, *Senior Circuit Judge*

HON. ROGER J. KILEY, *Circuit Judge*

HON. LUTHER M. SWYGERT, *Circuit Judge*

HON. THOMAS E. FAIRCHILD, *Circuit Judge*

HON. WALTER J. CUMMINGS, *Circuit Judge*

HON. OTTO KERNER, *Circuit Judge*

No. 17166

UNITED STATES OF AMERICA

ex rel. WILLIAM ALLEN,

Petitioner-Appellant,

vs.

STATE OF ILLINOIS,

Respondent-Appellee.

Appeal from the
the United States
District Court for
the Northern Dis-
trict of Illinois,
Eastern Division.

IT IS ORDERED by the Court that the petition of petitioner-appellant for a rehearing *en banc* of the above-entitled cause be, and the same is hereby DENIED.

(Circuit Judges Fairchild and Cummings voted to grant the petition for rehearing *en banc*.)

Supreme Court of the United States

No. 606 -----, October Term, 19 69

Illinois,

Petitioner,

v.

William Allen

ORDER ALLOWING CERTIORARI. Filed December 9 -----, 19 69

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh ----- Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.